

---

**TITLE 329 SOLID WASTE MANAGEMENT DIVISION****SECOND NOTICE OF COMMENT PERIOD**

LSA Document #20-25

**UNDERGROUND STORAGE TANK REVISIONS****PURPOSE OF NOTICE**

The Indiana Department of Environmental Management (IDEM) is soliciting public comment on amendments to rules at [329 IAC 9](#) concerning underground storage tanks. IDEM seeks comment on the affected citations listed and any other provisions of Title 329 that may be affected by this rulemaking.

**HISTORY**

First Notice of Comment Period: February 19, 2020, Indiana Register (DIN: [20200219-IR-329200025FNA](#)).

**CITATIONS AFFECTED:** [329 IAC 9-1-1](#); [329 IAC 9-2-2](#); [329 IAC 9-2-3](#); [329 IAC 9-3-1](#); [329 IAC 9-3-2](#); [329 IAC 9-4-4](#); [329 IAC 9-5-1](#); [329 IAC 9-5-2](#); [329 IAC 9-5-3.2](#); [329 IAC 9-5-4.2](#); [329 IAC 9-5-5.1](#); [329 IAC 9-5-6](#); [329 IAC 9-5-7](#); [329 IAC 9-5-8](#); [329 IAC 9-6-2.1](#); [329 IAC 9-6-2.5](#); [329 IAC 9-6-2.6](#); [329 IAC 9-6-5](#); [329 IAC 9-8-1](#); [329 IAC 9-8-3](#); [329 IAC 9-8-4](#); [329 IAC 9-8-5](#); [329 IAC 9-8-6](#); [329 IAC 9-8-7](#); [329 IAC 9-8-8](#); [329 IAC 9-8-9](#); [329 IAC 9-8-10](#); [329 IAC 9-8-11](#); [329 IAC 9-8-12](#); [329 IAC 9-8-13](#); [329 IAC 9-8-14](#); [329 IAC 9-8-15](#); [329 IAC 9-8-16](#); [329 IAC 9-8-17](#); [329 IAC 9-8-18](#); [329 IAC 9-8-19](#); [329 IAC 9-8-20](#); [329 IAC 9-8-21](#); [329 IAC 9-8-22](#); [329 IAC 9-8-23](#); [329 IAC 9-8-24](#).

**AUTHORITY:** [IC 13-14-8-1](#); [IC 13-14-8-2](#); [IC 13-14-8-7](#); [IC 13-23-1-2](#); [IC 13-23-1-3](#); [IC 13-23-1-4](#).

**SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING****Basic Purpose and Background**

IDEM administers a federally-approved underground storage tank (UST) program. The federal government regulates UST owners and operators through Subtitle I of the Solid Waste Disposal Act but allows states to maintain their own regulatory programs. State UST programs must comply with 42 U.S.C. Subchapter 9 and corresponding federal regulations, including 40 CFR 280, which set standards for UST installation, ownership, operation, release prevention, release detection and reporting, corrective action, financial responsibility, operator training, and UST closure.

Indiana UST rules are found at [329 IAC 9](#) and require UST owners and operators to install and maintain equipment to prevent corrosion, detect leaks, prevent overfill and spills, and meet other performance and federal upgrade standards. These rules also include reporting processes for owners and operators to follow and corrective actions that must be taken in the event there is a release. The state rule at [329 IAC 9](#) also requires owners and operators to maintain financial responsibility for corrective action and liability to third parties, and addresses IDEM's ability to prohibit delivery, deposit, or acceptance of a regulated substance into a UST, as authorized by [IC 13-23](#).

On January 10, 2018, the Environmental Rules Board (board) approved changes to [329 IAC 9](#) in response to new requirements promulgated by the United States Environmental Protection Agency (U.S. EPA) in a final rule published on July 15, 2015 (80 FR 41565). These changes were largely incorporated into the Indiana Administrative Code by reference to the Code of Federal Regulations (CFR) to ensure proper alignment with federal rules. In general, this rule incorporated U.S. EPA's new operation and maintenance requirements and addressed UST systems that were deferred in prior UST regulations.

In this rulemaking, IDEM proposes to amend additional portions of [329 IAC 9](#) with the overall goal of removing requirements that are more stringent than those found in the CFR and consequently lessening costs and regulatory burdens on UST owners. Specifically, this rulemaking will modify [329 IAC 9-1-1](#) to incorporate additional portions of the CFR, while modifying or repealing portions of [329 IAC 9-2](#), [329 IAC 9-3](#), [329 IAC 9-4](#), [329 IAC 9-5](#), [329 IAC 9-6](#), and [329 IAC 9-8](#). These sections regulate reporting and record keeping, notification requirements, releases, initial response, site investigation, corrective action, closure, and financial responsibility, respectively.

**[IC 13-14-9-4](#) Identification of Restrictions and Requirements Not Imposed under Federal Law**

No element of the draft rule imposes either a restriction or a requirement on persons to whom the draft rule applies that is not imposed under federal law.

**Potential Fiscal Impact**

This rulemaking will have a potentially positive fiscal impact on UST owners and operators in Indiana. Current state-only UST regulations are more stringent than federal regulations and require more paperwork and related costs from UST owners and operators. By repealing the more proscriptive state regulations and incorporating federal regulations by reference, this rulemaking will have a positive fiscal impact on UST owners and operators

in Indiana by reducing the amount of time and money needed to comply with the state's current regulations.

### **Public Participation and Work Group Information**

At this time, no work group is planned for the rulemaking. If you feel that a work group or other informal discussion on the rule is appropriate, please contact Seth Engdahl, Rules Development Branch, Office of Legal Counsel at [sengdahl@idem.in.gov](mailto:sengdahl@idem.in.gov), (317) 234-9535, or (800) 451-6027 (in Indiana).

### **SUMMARY/RESPONSE TO COMMENTS FROM THE FIRST COMMENT PERIOD**

IDEM requested public comment from February 19, 2020, through March 20, 2020, on alternative ways to achieve the purpose of the rule and suggestions for the development of draft rule language. IDEM received no comments in response to the First Notice of Comment Period.

### **REQUEST FOR PUBLIC COMMENTS**

This notice requests the submission of comments on the draft rule language, including suggestions for specific revisions to language to be contained in the draft rule. Comments may be submitted in one of the following ways:

- (1) By mail or common carrier to the following address:

LSA Document #20-25 UST Revisions  
Seth Engdahl  
Rules Development Branch  
Office of Legal Counsel  
Indiana Department of Environmental Management  
Indiana Government Center North  
100 North Senate Avenue  
Indianapolis, IN 46204-2251

- (2) By electronic mail to [sengdahl@idem.in.gov](mailto:sengdahl@idem.in.gov). To confirm timely delivery of submitted comments, please request a document receipt when sending the electronic mail. **PLEASE NOTE: Electronic mail comments will NOT be considered part of the official written comment period unless they are sent to the address indicated in this notice.**

Contact Karla Kindrick at [kkindric@idem.in.gov](mailto:kkindric@idem.in.gov) or (317) 232-8922 if another method of submitting comments within the comment period is desired. Regardless of the delivery method used, in order to properly identify each comment with the rulemaking action it is intended to address, each comment document must clearly specify the LSA document number of the rulemaking.

### **COMMENT PERIOD DEADLINE**

All comments must be postmarked or time stamped not later than October 21, 2022.

Additional information regarding this action may be obtained from Seth Engdahl, Rules Development Branch, Office of Legal Counsel, [sengdahl@idem.in.gov](mailto:sengdahl@idem.in.gov), (317) 394-9535, or (800) 451-6027 (in Indiana).

### **DRAFT RULE**

SECTION 1. [329 IAC 9-1-1](#) IS AMENDED TO READ AS FOLLOWS:

#### **[329 IAC 9-1-1](#) Applicability, incorporation by reference, and definitions**

**Authority:** [IC 4-22-2-21](#); [IC 13-14-8](#); [IC 13-23-1](#)

**Affected:** [IC 4-22-9-5](#); [IC 13-11-2-158](#); [IC 13-12-3-2](#); [IC 13-23](#)

Sec. 1. (a) This article applies to all owners and operators of a UST as described in 40 CFR 280.10\*.

(b) Unless otherwise indicated, any reference to a provision of the Code of Federal Regulations (CFR) means the ~~July 1, 2016~~ **July 1, 2022**, edition, as incorporated by reference in this article.

(c) Owners and operators of a UST as described in 40 CFR 280.10\* shall comply with the technical standards and corrective action requirements for USTs at 40 CFR 280\*, with the following exceptions:

- (1) Definitions of "owner" and "operator" in 40 CFR 280.12.
- (2) 40 CFR 280.22.
- (3) ~~40 CFR 280.53~~ **40 CFR 280.71 through 40 CFR 280.74.**
- (4) ~~40 CFR 280.60~~ **40 CFR 280.101.**
- (5) ~~40 CFR 280.61.~~
- (6) ~~40 CFR 280.63 through 40 CFR 280.67.~~

- ~~(7)~~ 40 CFR 280, Subpart G.
- ~~(8)~~ 40 CFR 280, Subpart H.
- ~~(9)~~ **(5)** 40 CFR 280, Subpart I.

(d) When used in 40 CFR 280\* as incorporated by this rule, substitute the following:

- (1) A reference to "state" means Indiana.
- (2) A reference to "implementing agency" means the Indiana department of environmental management.
- (3) A reference to "person" means the definition found at [IC 13-11-2-158\(e\)](#).**
- ~~(3)~~ **(4)** A reference to 40 CFR 280.22 means [329 IAC 9-2-2](#).
- ~~(4)~~ **(5)** A reference to 40 CFR 280.53 40 CFR 280.71 means [329 IAC 9-4-4](#) [329 IAC 9-6-2.1](#).
- ~~(5)~~ **(6)** A reference to 40 CFR 280, Subpart F 40 CFR 280.72 means [329 IAC 9-5](#) [329 IAC 9-6-2.5](#).
- ~~(6)~~ **(7)** A reference to 40 CFR 280, Subpart G 40 CFR 280.73 means [329 IAC 9-6](#) [329 IAC 9-6-3](#).
- ~~(7)~~ **(8)** A reference to 40 CFR 280, Subpart H 40 CFR 280.74 means [329 IAC 9-8](#) [329 IAC 9-6-4](#).
- (9) A reference to 40 CFR 280.101 means [329 IAC 9-8-11](#).**
- ~~(8)~~ **(10)** A reference to an October 13, 2015, compliance date means June 28, 2018.
- ~~(9)~~ **(11)** A reference to an April 11, 2016, compliance date means ~~December 26, 2018~~ **September 2, 2009**.
- ~~(10)~~ **(12)** A reference to an October 13, 2018, compliance date means June 28, 2021, except in 40 CFR 280, Subpart J.
- ~~(11)~~ **(13)** A reference to an October 13, 2021, compliance date means June 28, 2024.
- ~~(12)~~ **(14)** A reference to an October 13, 2022, compliance date means June 28, 2025.

(e) In addition to the definitions in ~~this section, the definitions in~~ [IC 13-11-2](#) and 40 CFR 280.12\*, **the definitions in this rule** apply throughout this rule article.

\*These documents are incorporated by reference. Copies may be obtained from the Government Publishing Office, [www.gpo.gov](http://www.gpo.gov), or are available for review at the Indiana Department of Environmental Management, Office of Legal Counsel, Indiana Government Center North, 100 North Senate Avenue, Thirteenth Floor, Indianapolis, IN 46204.

*(Solid Waste Management Division; [329 IAC 9-1-1](#); filed Dec 1, 1992, 5:00 p.m.: 16 IR 1062; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3683; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed Aug 30, 2004, 9:35 a.m.: 28 IR 145; filed Aug 3, 2009, 1:48 p.m.: [20090902-IR-329080055FRA](#); filed May 29, 2018, 3:35 p.m.: [20180627-IR-329160204FRA](#); filed Mar 18, 2019, 2:41 p.m.: [20190417-IR-329180281FRA](#))*

SECTION 2. [329 IAC 9-2-2](#) IS AMENDED TO READ AS FOLLOWS:

### **[329 IAC 9-2-2](#) Notification and registration requirements**

Authority: [IC 13-14-8](#); [IC 13-23-1](#)

Affected: [IC 13-23-3](#)

Sec. 2. (a) ~~All notifications required to be submitted under this article must be submitted on~~ **The owner and operator of a UST shall notify the department using a form provided approved by the Indiana department of administration (IDOA) for use by the department and in a format prescribed by the commissioner in the following circumstances:**

~~(b) The owner of (1) For a UST system, UST, or tank shall submit a notification form to register the UST system, UST, or tank to that has not been previously registered with the department, within thirty (30) days of becoming the owner of, or bringing into use, shall register the UST system, UST, or tank by completing and submitting a form as described in subsection (b) within thirty (30) days of:~~

~~(A) becoming the owner of the UST; or~~

~~(B) bringing into use means the UST system, UST, or tank as determined if the UST:~~

~~(4) (i) contains or has contained a regulated substance; and~~

~~(2) (ii) has not been closed under [329 IAC 9-6](#).~~

**(2) For a UST that has been previously registered with the department, the owner and operator shall complete and submit a form as described in subsection (c) to notify the department within thirty (30) days of the following circumstances:**

**(A) Facility modifications, including the following changes:**

**(i) Facility type, location, or name.**

**(ii) New UST system.**

(iii) UST owner, operator, or property owner.

(iv) Financial responsibility.

(B) UST system modification, including the upgrade of a UST system to meet requirements of 40 CFR 280.21\*.

(C) Installation of a method of release detection under 40 CFR 280, Subpart D\*.

(3) The owner and operator of a UST shall complete and submit the form as described in subsection (f) at least thirty (30) days prior to taking the following actions:

(A) Temporary closure of a UST under 40 CFR 280.70\*.

(B) Permanent closure or change-in-service of a UST under [329 IAC 9-6](#).

(4) For a UST that has been permanently closed under [329 IAC 9-6](#), the owner shall complete and submit a form as described in subsection (g) within thirty (30) days of permanently closing a UST and submit the following closure report materials:

(A) Site-specific and sampling locations map.

(B) Leak detection methods used for tanks and piping and most recent tank and line tightness testing results.

(C) Field screening values, laboratory values of each sample, sample collection and laboratory methods, data, and chain of custody.

(D) Boring logs, as applicable.

(E) Disposal documentation.

~~(e)~~ **(b)** An owner required to submit a notification form under this section **subsection (a)(1)** shall provide the following information on a form approved by the IDOA for use by the department:

~~(1) a notification for each UST owned;~~ **Facility name, type, location, and contact information.**

~~(2) complete information required on the form for each owner and operator of the UST owned; and~~

~~(3) if applicable, a separate notification form for each separate place of operation at which the USTs are located.~~ **Ownership effective date.**

**(4) Contact information for an individual at the facility if different than the owner or operator.**

**(5) Owner and operator certification.**

**(6) Source of financial responsibility.**

**(7) Information on the deeded or active land contract property owner and certification, as applicable.**

**(8) Information on the individual preparing the notification form.**

**(9) Contractor information, including contractor certification and their Indiana department of homeland security, division of fire and building safety certification number.**

**(10) Indication whether the following actions have taken place:**

**(A) Installation has been inspected by a registered engineer and registration identification number provided.**

**(B) Manufacturer's installation checklists have been completed and included with the notification form submitted to the department.**

**(C) Installer has been certified by a tank and piping manufacturer.**

**(D) Work has been inspected by the Indiana department of homeland security, division of fire and building safety.**

**(11) Name and contact information of potentially interested parties that the department may contact regarding the site.**

**(12) A map of the facility site.**

**(13) Identification of each UST at the facility.**

**(14) Status of each UST and status date.**

**(15) Information on:**

**(A) the substances currently or last stored in the UST;**

**(B) UST construction attributes;**

**(C) UST corrosion protection;**

**(D) piping construction and protection;**

**(E) UST and piping release detection; and**

**(F) spill and overfill prevention equipment.**

~~(d)~~ **(c)** An owner and operator may required to submit a form under **subsection (a)(2)** shall provide all the information required in **subsection (b)** on a notification for several USTs at one (1) location using one (1) form approved by the IDOA for use by the department and shall indicate the type of notification on the form.

~~(e)~~ All owners and operators of new or replaced UST systems shall certify, on each notification form submitted compliance with the following requirements:

- ~~(1) Installation of all tanks and piping under 40 CFR 280.20\*.~~
- ~~(2) Cathodic protection of steel tanks and piping under 40 CFR 280.20\*.~~
- ~~(3) Release detection under 40 CFR 280, Subpart D\*.~~
- ~~(4) Financial responsibility under [329 IAC 9-8](#).~~

~~(f) All owners and operators~~ **(d) The owner and operator** of a UST systems shall ensure that ~~the a person~~ **who certified by the department of homeland security, division of fire and building safety** performs tank system:

- (1) installations;
- (2) testing;
- (3) upgrades;
- (4) closures;
- (5) removals; and
- (6) change-in-service.

~~is certified by the department of homeland security, division of fire and building safety.~~

**(e) The certified person who performs the work owner or operator shall certify on the notification a form approved by the IDOA for use by the department that the work performed complies with methods specified in this article and 40 CFR 280, Subpart C\* and was performed by a person with a certification as described in subsection (d).**

~~(g) All owners and operators of UST systems shall submit a notification to the department within thirty (30) days of completing any of the following actions:~~

- ~~(1) Temporary closure of a UST system under [329 IAC 9-6-5](#).~~
- ~~(2) Permanent closure of a UST system under [329 IAC 9-6](#).~~
- ~~(3) Upgrade of a UST system to meet requirements of 40 CFR 280.21\*.~~
- ~~(4) Installation of a method of release detection under 40 CFR 280, Subpart D\*.~~

**(f) All owners and operators required to submit a form under subsection (a)(3) shall provide the following information on a form approved by the IDOA for use by the department at least thirty (30) days prior to closure or change-in-service:**

- (1) Type of proposed closure.**
- (2) Facility name, type, contact information, and location.**
- (3) Name and contact information for the individual preparing the notification.**
- (4) As applicable, name and contact information for the:**
  - (A) owner and operator of the UST;**
  - (B) deeded property owner;**
  - (C) active land contract property owner; and**
  - (D) proposed contractor.**
- (5) Name and email address of any potentially interested party that the department may contact regarding the site.**
- (6) Leaking underground storage tank incident number and date of incident.**
- (7) Number of regulated USTs onsite before closure.**
- (8) Number of additional USTs discovered during UST closure, as applicable.**
- (9) Information on the closed USTs, including:**
  - (A) an approval letter from the Indiana department of homeland security; and**
  - (B) a site assessment work plan and site map with proposed boring locations.**
- (10) Piping information.**
- (11) Dispenser information.**

**(g) Owners and operators required to submit a form under subsection (a)(4) shall submit the following information on a form approved by the IDOA for use by the department:**

- (1) All information listed in subsection (f), except the information required in subsection (f)(9).**
- (2) Information on storage and disposal.**
- (3) If the UST and piping were removed during closure, the owner and operator shall provide the following information:**
  - (A) Amount of backfill material initially removed during UST system closure.**
  - (B) Indication whether:**
    - (i) there was over-excavation that took place after the removal of a UST system and, as applicable,**



- the amount of over-excavated material;
- (ii) free product was present in the UST pit or piping run;
- (iii) bedrock was encountered during UST removal; and
- (iv) contaminated material above applicable screening levels was excavated.
- (C) The owner and operator shall provide an explanation why contaminated material above applicable screening levels was not excavated, if applicable.
- (4) Information on the material used to backfill the excavation.
- (5) If water was encountered during the excavation of a UST system, the owner and operator shall provide the following information:
  - (A) Indication of whether:
    - (i) the water was removed during the excavation and, if applicable, the total amount of water removed; and
    - (ii) the water was sampled.
  - (B) The owner and operator shall provide an explanation why the water was not sampled, if applicable.
  - (C) Method of water disposal.
- (6) The owner and operator shall indicate using specific details:
  - (A) which component appears to have failed if contamination above screening level was encountered; and
  - (B) what action or process appears to have caused the contamination.
- (7) The owner and operator shall indicate the following if a UST system or piping were not removed during closure:
  - (A) What type of inert solid material was used to fill the UST or piping.
  - (B) Whether water was encountered in the soil borings during in-place closure.
  - (C) Whether bedrock was encountered during UST system in-place closure.
- (8) Laboratory information.
- (9) Soil screening levels and analytical results.
- (10) Detailed comments for any unique circumstances that need to be described, as applicable.
- (11) A list of owners and operators during the previous twenty-five (25) years, including their names, addresses, and type of business run from the facility.
- (12) Type of site coverage.
- (13) Information on the site proximity to human and environmentally sensitive areas, including wellhead protection areas described in [327 IAC 8-4.1](#).
- (14) Information on any previously closed UST system.

(h) An owner may provide notification for several USTs at one (1) location using one (1) form.

~~(h)~~ (i) Any person who sells a facility with a regulated UST or UST system shall notify the purchaser of the purchaser's obligation to submit a notification **the appropriate form** under subsection ~~(b)~~ (a).

~~(i)~~ (j) Pursuant to 42 U.S.C. 6991a, et seq., in effect on September 30, 1996, notification of the service status of the UST system must be provided to the department by the owner or operator of a UST system that is:

- (1) in the ground on or after May 8, 1986; and
- (2) not taken out of operational life on or before January 1, 1974.

\*These documents are incorporated by reference. Copies may be obtained from the Government Publishing Office, [www.gpo.gov](http://www.gpo.gov), or are available for review at the Indiana Department of Environmental Management, Office of Legal Counsel, Indiana Government Center North, 100 North Senate Avenue, Thirteenth Floor, Indianapolis, IN 46204.

(Solid Waste Management Division; [329 IAC 9-2-2](#); filed Dec 1, 1992, 5:00 p.m.: 16 IR 1068; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3699; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed Aug 30, 2004, 9:35 a.m.: 28 IR 150; errata filed Oct 7, 2004, 11:55 a.m.: 28 IR 608; filed Aug 3, 2009, 1:48 p.m.: [20090902-IR-329080055FRA](#); filed May 29, 2018, 3:35 p.m.: [20180627-IR-329160204FRA](#); errata filed May 31, 2018, 9:55 a.m.: [20180627-IR-329160204ACA](#))

SECTION 3. [329 IAC 9-2-3](#) IS AMENDED TO READ AS FOLLOWS:

### [329 IAC 9-2-3](#) Release detection certification of compliance

**Authority:** [IC 13-14-8](#); [IC 13-23-1](#)

**Affected:** [IC 13-23](#)

Sec. 3. **(a)** The owner or operator of a UST shall demonstrate compliance with the release detection requirements of 40 CFR 280, Subpart D\* and this article by providing a certification of compliance on ~~the~~ **a form approved by the Indiana department of administration for use by the department as** required under section 2 of this rule.

**(b)** The certification must demonstrate that the person who performs the work that brings the UST in compliance with 40 CFR 280, Subpart D\* has been certified by the office of the state fire marshal under [675 IAC 12-12](#).

\*This document is incorporated by reference. Copies may be obtained from the Government Publishing Office, [www.gpo.gov](http://www.gpo.gov), or are available for review at the Indiana Department of Environmental Management, Office of Legal Counsel, Indiana Government Center North, 100 North Senate Avenue, Thirteenth Floor, Indianapolis, IN 46204.

(Solid Waste Management Division; [329 IAC 9-2-3](#); filed May 29, 2018, 3:35 p.m.: [20180627-IR-329160204FRA](#))

SECTION 4. [329 IAC 9-3-2](#) IS AMENDED TO READ AS FOLLOWS:

**[329 IAC 9-3-2](#) Electronic reporting and submittal**

**Authority:** [IC 13-14-8](#); [IC 13-23-1](#)

**Affected:** [IC 13-14-13](#); [IC 13-23](#)

Sec. 2. **(a)** Documentation required to be submitted to the department by this article, with the exception of reports required under ~~[329 IAC 9-4-4](#)~~ **40 CFR 280.53\***, may be submitted in an electronic format, in accordance with [IC 13-14-13](#), as prescribed by the commissioner.

**(b)** Any documents submitted in an electronic format must also be submitted as a paper copy unless the commissioner makes a determination that only an electronic copy is needed.

\*This document is incorporated by reference. Copies may be obtained from the Government Publishing Office, [www.gpo.gov](http://www.gpo.gov), or are available for review at the Indiana Department of Environmental Management, Office of Legal Counsel, Indiana Government Center North, 100 North Senate Avenue, Thirteenth Floor, Indianapolis, IN 46204.

(Solid Waste Management Division; [329 IAC 9-3-2](#); filed Aug 30, 2004, 9:35 a.m.: 28 IR 155; filed May 29, 2018, 3:35 p.m.: [20180627-IR-329160204FRA](#))

SECTION 5. [329 IAC 9-6-2.1](#) IS AMENDED TO READ AS FOLLOWS:

**[329 IAC 9-6-2.1](#) Permanent closure and change-in-service**

**Authority:** [IC 13-14-8](#); [IC 13-23-1](#)

**Affected:** [IC 13-12-3-2](#); [IC 13-23](#)

Sec. 2.1. **(a)** At least thirty (30) days before beginning permanent closure or a change-in-service, the owner or operator shall notify the department and the office of the state fire marshal of the permanent closure or change-in-service using the notification form required **described in ~~[329 IAC 9-2-2](#)~~ [329 IAC 9-2-2\(f\)](#)**. If the permanent closure or change-in-service is a part of the response to corrective action, then the notification requirements of ~~[329 IAC 9-5](#)~~ **40 CFR 280, Subpart F\*** apply.

**(b)** All tanks permanently closed must be removed from the ground or closed in place and the owner or operator must conduct a site assessment in accordance with section 2.5 of this rule.

**(c)** Continued use of a UST to store a nonregulated substance is considered a change-in-service. Before a

change-in-service, the owner and operator must empty and clean the tank by removing all liquid and accumulated sludge and conduct a site assessment in accordance with section 2.5 of this rule.

**\* This document is incorporated by reference. Copies may be obtained from the Government Publishing Office, [www.gpo.gov](http://www.gpo.gov), or are available for review at the Indiana Department of Environmental Management, Office of Legal Counsel, Indiana Government Center North, 100 North Senate Avenue, Thirteenth Floor, Indianapolis, IN 46204.**

*(Solid Waste Management Division; [329 IAC 9-6-2.1](#); filed May 29, 2018, 3:35 p.m.: [20180627-IR-329160204FRA](#); errata filed May 31, 2018, 9:55 a.m.: [20180627-IR-329160204ACA](#))*

SECTION 6. [329 IAC 9-6-2.5](#) IS AMENDED TO READ AS FOLLOWS:

**[329 IAC 9-6-2.5](#) Site assessment for permanent closure or change-in-service**

**Authority:** [IC 13-14-8](#); [IC 13-23-1](#)

**Affected:** [IC 13-12-3-2](#); [IC 13-23](#)

Sec. 2.5. (a) A site assessment for a UST system undergoing permanent closure or a change-in-service must be provided by the UST owner or operator to the department not later than thirty (30) days after completion of permanent closure or change-in-service.

**(b)** The site assessment must include the following information and be conducted as follows:

(1) Sampling and laboratory analysis, with the associated detection limits, for soil samples and ground water samples are required for the chemical of concern in the UST system. The quantity and location of soil and ground water samples must be taken as follows:

(A) Quantity and location of soil samples for permanent closure and change-in-service as follows:

(i) In-place closure soil samples must be taken as described in section 2.6(a) of this rule.

(ii) Removal closure soil samples must be taken as described in section 2.6(b) of this rule.

(iii) Change-in-service soil samples must be taken as described in section 2.6(c) of this rule.

(B) Quantity and location of ground water samples for each permanent closure and change-in-service must be taken as described in section 2.6(d) of this rule.

(2) The owner or operator of the UST system shall supply the following information:

(A) The UST system facility owner or operator name, ~~agency's~~ owner identification number **issued by the department**, address, and phone number.

(B) The name of the UST system facility contact person, owner or operator affiliation, and phone number.

(C) **A list of all owners or operators of the UST** during the last twenty-five (25) years.

(3) For the UST **closure** contractor, the following information:

(A) UST closure contractor **name**, company name, and address.

(B) The name of the person on-site during closure that is certified by the office of the state fire marshal to perform UST closure and that person's certification number.

(4) For the UST site, information regarding the following:

(A) Facility name, ~~agency's~~ facility identification number **as issued by the department**, address, and phone number.

(B) Type of facility, past and current operation.

(C) Coverage, stating if coverage is turf, concrete, asphalt, or other.

(D) History of any spill reports listed by incident number.

(E) Site proximity to both human and environmentally sensitive areas, such as residences, schools, wells, well fields, or wellhead protection areas described in [327 IAC 8-4.1](#).

(F) Backfill and site natural soil texture.

(5) A site-specific map or maps with illustrated legends and compass directions, and at appropriate scale to show site details, described as follows:

(A) Drainage features, surface slope, or surface water run-off direction.

(B) Identified aboveground features, such as buildings, roadways, manways, pump islands, and utility and property lines.

(C) Identified subsurface features, such as tanks and excavation pit, piping, and utility conduits.

(D) Locations where samples were taken, soil borings made, and monitoring wells drilled.

(E) Location of active and previously closed tanks, as applicable.

(F) Site surroundings, such as adjacent buildings, businesses, or human and environmentally sensitive



areas, such as residences, schools, wells, well fields, or wellhead protection areas delineated in [327 IAC 8-4.1](#).

(6) Information for the UST being closed as follows:

- (A) The number and volume of tanks.
- (B) Past and present contents of the tank.
- (C) Construction material of **the** tank.
- (D) Construction and material of piping.
- (E) Age and installation date of **the** tank.
- (F) Leak detection methods used.
- (G) Records of the most current tank tightness test results.
- (H) Records of any other current leak detection method results, including the inventory records, ground water, or vapor monitoring results.
- (I) Information on any previously closed UST system, such as the date closed and the number, size, and product stored.

(7) Physical and chemical results of the samples taken under subdivision (1) as follows:

- (A) Data from analysis of soil samples presented in a tabular format.
- (B) Data from analysis of water samples presented in a tabular format.
- (C) A signed laboratory certificate of analysis listing analysis method, preparation method, date of sample receipt, and date of analysis.
- (D) Proper sample identification numbers for cross-reference to UST site maps.
- (E) Chain of custody documentation.
- (F) Description of the sampling procedures, sampling equipment, and decontamination procedures.
- (G) Data from analyses of used oil sampling, as applicable.

(8) Miscellaneous closure documentation as follows:

- (A) Contaminated soil and contaminated water disposal documentation.
- (B) Remaining product and sludge disposal documentation.
- (C) Tank and piping disposal documentation.

~~(b)~~ **(c)** If one (1) or more additional tanks are discovered during a closure, the owner and operator shall:

- (1) close each additional tank under this rule; and
- (2) supply all known information **specified in subsection (b)** on each additional tank in the site assessment.

~~(e)~~ **(d)** If, at any time during the site assessment, a release is either suspected or confirmed in the backfill, native soil, or ground water, the owner or operator shall:

- (1)** contact the ~~agency~~ **department** to report the suspected or confirmed release within twenty-four (24) hours after the release is suspected or confirmed; and
- (2)** proceed with corrective action under [329 IAC 9-5](#) **40 CFR 280, Subpart F\***.

~~(d)~~ **(e)** The permanent closure or change-in-service is not considered complete until all permanent closure or change-in-service requirements and site assessment requirements are met.

~~(e)~~ **(f)** If the site assessment is incomplete, the owner or operator shall be notified by the commissioner and shall have forty-five (45) days from receipt of the notice to complete the site assessment.

~~(f)~~ **(g)** If the UST contains hazardous substances, the owner and operator shall perform sampling and analyses ~~as required~~ for the chemical of concern.

**\* This document is incorporated by reference. Copies may be obtained from the Government Publishing Office, [www.gpo.gov](http://www.gpo.gov), or are available for review at the Indiana Department of Environmental Management, Office of Legal Counsel, Indiana Government Center North, 100 North Senate Avenue, Thirteenth Floor, Indianapolis, IN 46204.**

*(Solid Waste Management Division; [329 IAC 9-6-2.5](#); filed Aug 30, 2004, 9:35 a.m.: 28 IR 168; filed May 29, 2018, 3:35 p.m.: [20180627-IR-329160204FRA](#))*

SECTION 7. [329 IAC 9-6-2.6](#) IS AMENDED TO READ AS FOLLOWS:

**[329 IAC 9-6-2.6](#) Site assessment sampling requirements**

Sec. 2.6. (a) Soil sampling for an in-place closure must be conducted as follows:

(1) To request conditional approval for in-place closure, the owner and operator shall submit a site plan with an accompanying map showing proposed boring locations to the department and to the office of the state fire marshal, using the notification form under [329 IAC 9-2-2](#) including the following **described in [329 IAC 9-2-2\(f\)](#)**

**as follows:**

- (A) The map must be to scale and include the entire site.
- (B) An additional map showing only the underground storage area must be included for sites larger than one (1) acre.
- (C) The proposed boring locations must be as follows:
  - (i) One (1) boring every twenty (20) feet around the tank area, with a minimum of four (4) borings.
  - (ii) Each boring must be within three (3) feet adjacent to the UST.
- (2) The commissioner may grant conditional approval to proceed with in-place closure of the UST system based on the following:
  - (A) The location of the borings ~~as required~~ **identified** under subdivision (1).
  - (B) Approval from the office of the state fire marshal.
- (3) After approval is received under subdivision (2), the owner and operator may proceed with soil borings that must meet the following requirements:
  - (A) Soil sampling must be performed continuously using a sampling device relevant to the drilling technology used.
  - (B) Borings must extend two (2) feet or greater below the elevation of the base of the UST.
  - (C) If the boring depth is fifteen (15) feet or less, a minimum of two (2) soil samples are required at the point where a contaminant is detected, one (1) each from the:
    - (i) midpoint of the boring; and
    - (ii) bottom of the boring.
  - (D) If the boring depth is greater than fifteen (15) feet, a minimum of three (3) soil samples are required **as follows:**
    - (i) The most shallow soil sample must be taken one (1) foot or greater below grade.
    - (ii) Samples must be taken where the release is suspected or detected.

(b) Soil sampling for removal closure must be conducted ~~in compliance with the following~~ **as follows:**

- (1) Native soil samples must be taken from the following areas:
  - (A) Tank cavity excavation.
  - (B) Piping trenches.
  - (C) Dispensing unit areas.
  - (D) Remote fill pipe trenches.
- (2) Each UST excavation must be sampled separately. Composite samples are not acceptable for removal closure. The samples must meet the following requirements:
  - (A) All samples must be discrete grab samples taken directly from the undisturbed native soil from the base and sidewalls of the excavation. **Excavated materials must be staged in a separate area.** The following requirements apply to samples:
    - (i) Bottom samples must meet the following requirements:
      - (AA) Soil sampling must consist of a minimum of two (2) soil samples taken within two (2) feet below both ends of each UST.
      - (BB) If the UST capacity is greater than ten thousand (10,000) gallons, one (1) additional sample must be taken within two (2) feet below the middle of the UST.
    - (ii) Sidewall samples must meet the following requirements:
      - (AA) The sidewalls must be sampled and analyzed at a rate of one (1) sample every twenty (20) feet of perimeter distance around the excavation zone.
      - (BB) If the perimeter dimension measures less than eighty (80) feet, a minimum of one (1) sample for each sidewall must be taken.
      - (CC) Sidewall samples must be taken at a point half the distance from the surface to the bottom of the UST excavation.
  - (B) ~~Excavated materials must be staged in a separate area.~~ Samples must be discrete grab samples taken directly from the excavated materials.
  - (C) Sampling of the excavated soil must occur for every fifty (50) cubic yards of material.
- (3) Native soil under piping and dispenser islands ~~which that routinely contains~~ **contained** regulated substances must be sampled. All samples must be discrete grab samples. The following requirements apply to

the number and location of sampling for piping and dispensers:

- (A) Soil sampling from under the piping must be completed as follows:
  - (i) The soil must be sampled every twenty (20) feet, or fraction thereof, along the piping run. If the piping run is less than twenty (20) feet in length, one (1) sample must be taken at half the distance between the UST excavation and the pump or dispenser island.
  - (ii) Soil must be sampled from under the piping elbows and connectors.
- (B) Soils under the dispenser islands must be sampled and analyzed at a rate of one (1) soil sample per dispenser.
- (C) If the UST system has a remote fill line, the following soil samples must be collected:
  - (i) Soils under the remote fill line must be sampled and analyzed at the origin or fill area and every twenty (20) feet, or fraction thereof, from the fill area to the UST connection.
  - (ii) If the remote fill line is less than twenty (20) feet, one (1) soil sample must be taken half the distance between the fill area and the UST.
- (D) Composite samples are not acceptable for permanent closure.
- (4) Soil sampling under the piping and product dispenser islands is not required if all dispensers and piping that routinely contain product are located directly above the UST system that is being permanently closed by removal and the location is documented.
- (5) During removal closure, native soil and backfill that is to be returned to the UST excavation must be sampled. The sampling must meet the following requirements:
  - (A) The exposure criteria in accordance with [IC 13-12-3-2](#).
  - (B) One (1) discrete grab sample must be taken for every fifty (50) cubic yards of native soil or backfill.
- (c) Soil samples for a change-in-service must be taken as follows:
  - (1) Soil sampling must be performed continuously using a sampling device relevant to the drilling technology and used every twenty (20) feet around the tank area, with a minimum of four (4) borings as follows:
    - (A) Each soil boring must:
      - (i) be within three (3) feet of the UST; and
      - (ii) extend two (2) feet or greater below the elevation of the base of the UST.
    - (B) If the soil boring depth is fifteen (15) feet or less:
      - (i) two (2) soil samples must be taken where a contaminant is detected;
      - (ii) one (1) soil sample must be taken at the midpoint of the soil boring; and
      - (iii) one (1) soil sample must be taken at the bottom of the soil boring.
    - (C) If the soil boring depth is greater than fifteen (15) feet, three (3) soil samples are required as follows:
      - (i) Samples must be collected where the release is suspected or detected.
      - (ii) One (1) soil sample must be taken one (1) foot or greater below grade and must be the most shallow sample taken.
  - (2) Piping and dispenser sampling and analysis must be completed ~~under~~ **in accordance with** subsection (b)(3) and (b)(4).
- (d) Water samples for ~~any~~ **a** permanent closure or change-in-service must be collected as follows:
  - (1) For ~~any~~ **a** permanent closure or change-in-service, a ground water sample must be collected within any area where a suspected contaminant release has occurred, or where a chemical of concern release has been substantiated through one (1) of the following:
    - (A) Visual staining of the soil or water.
    - (B) Field screening with ~~the~~ **one (1) of the** following:
      - (i) Flame ionization detector.
      - (ii) Photo ionization detector.
      - (iii) Field gas chromatograph.
    - (C) Petroleum odors.
    - (D) Laboratory analytical results.
  - (2) For an in-place closure or change-in-service, borings **and water sampling** are to be made as follows:
    - (A) One (1) boring must be placed in each of the four (4) principal directions within ten (10) feet of the area most likely to have contaminated ground water.
    - (B) Each boring must extend to the first saturated ground water zone or to a total depth of thirty (30) feet below grade at the area of suspected or confirmed release. A water sample must be collected from each boring if ground water is present within a depth of thirty (30) feet or less.
    - (C) If ground water is not encountered within a depth of thirty (30) feet, an additional soil sample must be obtained at the base of the boring or a minimum depth of thirty (30) feet.
  - (3) For removal closure, water sampling must be conducted as follows:
    - (A) If any water is encountered in any excavation, a minimum of one (1) water sample must be collected

from the water encountered.

(B) The ground water sample collected in subdivision (1) must be collected from a continuously sampled boring that extends to the first saturated ground water zone or to a total depth of thirty (30) feet below grade at the area of suspected or confirmed release.

(C) If ground water is not encountered within a depth of thirty (30) feet, a soil sample must be obtained at the base of the boring.

(4) If bedrock is encountered in a boring before a depth of thirty (30) feet is reached, and a saturated ground water zone is not encountered in the boring, an owner or operator may contact the department for approval of alternative sampling or waiver of ground water sampling requirements. The department may approve a waiver of ground water sampling within the bedrock if the owner or operator can demonstrate the following:

(A) A soil zone at least ten (10) feet thick existing immediately above the bedrock does not have a contaminant.

(B) A soil sample collected immediately above the bedrock does not have a contaminant.

(e) The following conditions apply to ~~any~~ a waiver of sampling:

(1) The commissioner may waive sampling under any of the following conditions:

(A) A leaking underground storage tank incident number is assigned and the following requirements are completed:

(i) Permanent closure is conducted in response to a confirmed release at the site.

(ii) The confirmed release occurred before the request for permanent closure.

(B) The initial site characterization meets the requirements of ~~329 IAC 9-5-5.1~~ **40 CFR 280.63\***.

(C) The corrective action plan meets the requirements of ~~329 IAC 9-5-7~~ **40 CFR 280.66\***.

(D) Bedrock was encountered during the boring as described in subsection (d)(4).

(2) Sites that have previous releases and are not under remediation at the time of permanent closure are not eligible for a sampling waiver.

(3) In-place closure sampling requirements may not be waived.

**\* These documents are incorporated by reference. Copies may be obtained from the Government Publishing Office, [www.gpo.gov](http://www.gpo.gov), or are available for review at the Indiana Department of Environmental Management, Office of Legal Counsel, Indiana Government Center North, 100 North Senate Avenue, Thirteenth Floor, Indianapolis, IN 46204.**

*(Solid Waste Management Division; [329 IAC 9-6-2.6](#); filed May 29, 2018, 3:35 p.m.: [20180627-IR-329160204FRA](#))*

SECTION 8. [329 IAC 9-8-11](#) IS AMENDED TO READ AS FOLLOWS:

**[329 IAC 9-8-11](#) Excess liability trust fund**

**Authority:** [IC 13-14-8](#); [IC 13-23-1](#)

**Affected:** [IC 13-23-4-1](#); [IC 13-23-4-2](#); [IC 13-23-9-1.3](#)

Sec. 11. (a) An owner or operator may satisfy the financial responsibility requirements of ~~section 4 of this rule~~ **40 CFR 280.93\*** by participation in the excess liability trust fund under [328 IAC 1](#). Reimbursement from the fund is determined by compliance with [328 IAC 1](#).

(b) An owner or operator of:

(1) twelve (12) or fewer USTs shall demonstrate the ability to pay the applicable deductible amount under [IC 13-23-9-1.3](#); or

(2) more than twelve (12) USTs shall demonstrate the ability to pay two (2) times the applicable deductible amount under [IC 13-23-9-1.3](#).

(c) The owner or operator shall ~~use any one (1) or a combination of the following mechanisms to demonstrate the ability to pay the applicable amount under subsection (b)~~ **with a written and signed certification worded exactly as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:**

**I certify that I own or operate, or that I am an authorized representative of the business entity that owns or operates, [insert number] underground storage tanks at the facility with facility identification (FID) number [insert FID number assigned by the Indiana Department of Environmental Management]**

located at [insert facility address]. I further certify that I have, or the business entity I represent has, the ability to pay the deductible or twice the deductible as applicable and required by [IC 13-23-9-1.3](#) and [329 IAC 9-8-11\(b\)](#). I further certify that the mechanism used to satisfy such deductible amount consists of the following: [insert mechanism description]

(1) A letter signed by an officer of a federally insured financial institution that verifies the financial institution's commitment to issue a loan to the owner or operator, if necessary, to pay the applicable amount under subsection (b). This letter must be reviewed and updated annually by the financial institution.

(2) A certificate of deposit from a federally insured financial institution.

(3) Liability insurance from an insurer or risk retention group.

(4) A surety bond.

(5) Irrevocable standby letter of credit issued by a federally insured financial institution.

(6) Establish a trust fund.

(7) Written guarantee from a person other than the owner or operator that verifies the guarantor's ability to pay the applicable amount under subsection (b). The written guarantee must disclose the relationship between the guarantor, and the owner or operator. The guarantor shall use one (1) or more of the mechanisms under this subsection.

(d) In addition to subsection (c), Local government owners or operators may use any one (1) or a combination of the following mechanisms to satisfy the requirements of subsection (b):

(1) A local government owner or operator may meet a bond rating test under section 14 of this rule. The local government owner or operator shall list the amount under subsection (b) for the "per occurrence" and "annual aggregate" amounts in the letter from the chief financial officer.

(2) A local government owner or operator may pass the financial test specified in section 15 of this rule. The local government owner or operator shall list the amount under subsection (b) for the "per occurrence" and "annual aggregate" amounts in the letter from the chief financial officer.

(3) A local government owner or operator may obtain a guarantee that conforms to section 16 of this rule. The local government owner or operator shall list the amount under subsection (b) for the "per occurrence" and "annual aggregate" amounts in the local government guarantee with standby trust made by a local government. The local government owner or operator shall list the amount under subsection (b) for the "per occurrence" and "annual aggregate" amounts in the local government guarantee without standby trust made by a local government.

(4) A local government owner or operator may establish a dedicated fund account that conforms to section 17 of this rule. The local government owner or operator shall list the amount under subsection (b) for the "per occurrence" and "annual aggregate" amounts in the letter from the chief financial officer.

(e) In accordance with 40 CFR 280.101\*, (d) The department shall issue a certificate of financial assurance to each eligible tank owner or operator describing the nature of the state's assumption of responsibility. The certificate of financial assurance must contain the following information:

(1) Facility name and address.

(2) Facility identification number issued by the department.

(3) Amount of funds for corrective action and compensating third parties that is assured by the fund.

(f) (e) The owner or operator must maintain the certificate of financial assurance described in subsection (e) (d) on file as proof of financial responsibility in accordance with section 24 of this rule **40 CFR 280.111\***.

\*This document is \*These documents are incorporated by reference. Copies may be obtained from the Government Publishing Office, [www.gpo.gov](http://www.gpo.gov), or are available for review at the Indiana Department of Environmental Management, Office of Legal Counsel, Indiana Government Center North, 100 North Senate Avenue, Thirteenth Floor, Indianapolis, IN 46204.

(Solid Waste Management Division; [329 IAC 9-8-11](#); filed Jul 19, 1999, 12:00 p.m.: 22 IR 3741; errata filed Sep 10, 1999, 9:08 a.m.: 23 IR 26; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; errata filed Feb 19, 2018, 10:06 a.m.: [20180228-IR-329180109ACA](#); filed May 29, 2018, 3:35 p.m.: [20180627-IR-329160204FRA](#))

SECTION 8. THE FOLLOWING ARE REPEALED: [329 IAC 9-3-1](#); [329 IAC 9-4-4](#); [329 IAC 9-5-1](#); [329 IAC 9-5-2](#); [329 IAC 9-5-3.2](#); [329 IAC 9-5-4.2](#); [329 IAC 9-5-5.1](#); [329 IAC 9-5-6](#); [329 IAC 9-5-7](#); [329 IAC 9-5-8](#); [329 IAC 9-6-5](#); [329 IAC 9-8-1](#); [329 IAC 9-8-3](#); [329 IAC 9-8-4](#); [329 IAC 9-8-5](#); [329 IAC 9-8-6](#); [329 IAC 9-8-7](#); [329 IAC 9-8-8](#); [329 IAC 9-8-9](#); [329 IAC 9-8-10](#); [329 IAC 9-8-12](#); [329 IAC 9-8-13](#); [329 IAC 9-8-14](#); [329 IAC 9-8-15](#); [329 IAC 9-8-16](#); [329 IAC 9-8-17](#); [329 IAC 9-8-18](#); [329 IAC 9-8-19](#); [329 IAC 9-8-20](#); [329 IAC 9-8-21](#); [329 IAC 9-8-22](#); [329 IAC](#)



[9-8-23](#); [329 IAC 9-8-24](#).

[Notice of Public Hearing](#)

*Posted: 09/21/2022 by Legislative Services Agency*  
An [html](#) version of this document.